FILED
OCT 20 1999
CLERK

No. 99-51

In The

Supreme Court of the United States

CARL T.C. GUTIERREZ and
MADELEINE Z. BORDALLO,

Petitioners,

vs.

JOSEPH F. ADA and FELIX P. CAMACHO,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

SETH M. HUFSTEDLER
Counsel of Record
SHIRLEY M. HUFSTEDLER
DIANE E. PRITCHARD
MORRISON & FOERSTER LLP
555 West Fifth Street,
Suite 3500
Los Angeles, California
90013-1024
(213) 892-5200

F. PHILIP CARBULLIDO
OLIVER W. BORDALLO
CARBULLIDO, BORDALLO &
BROOKS LLP
251 Martyr Street,
Suite 101
Agana, Guam 96910
(671) 472-6848
Counsel for Petitioners

DENNIS P. RIORDAN
Counsel of Record
DONALD M. HORGAN
DYLAN L. SCHAFFER
523 Octavia Street
San Francisco, California
94102
(415) 431-3472

ROBERT H. BORK, ESQ.
1150 17th Street, N.W.
Suite 1000
Washington, D.C. 20036
(202) 862-5852

CURTIS CHARLES VAN DE VELD
THE VAN DE VELD LAW OFFICES
Suite 213
Union Bank Building
194 Hernan Cortes Avenue
Agana, Guam 96910
(671) 472-2863
Counsel for Respondents

Petition For Certiorari Filed July 2, 1999
Certiorari Granted September 10, 1999

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

66 pp
$-5/0

TABLE OF CONTENTS

Page

Relevant Docket Entries 1

Complaint for Declaratory Judgment and Request for Issuance of Writ of Mandamus, filed December 1, 1998 5

United States District Court for the District of Guam's Order and Writ of Mandamus, filed December 9, 1998 ..... Pet. App. 24

Real Parties in Interests' Notice of Appeal to the United States Court of Appeals for the Ninth Circuit from the District Court's December 9, 1998 Order, filed December 9, 1998 62

Ninth Circuit's Order, filed December 15, 1998 ..... Pet. App. 57

Ninth Circuit's Opinion, filed April 19, 1999 ..... Pet. App. 1

Ninth Circuit's Order, filed May 25, 1999 ..... Pet. App. 61

Ninth Circuit's Order, filed May 27, 1999 ..... Pet. App. 59

Order of the Supreme Court of the United States Granting Petition for Writ of Certiorari, entered September 10, 1999 64

RELEVANT DOCKET ENTRIES

In the United States District Court for the District of Guam

12/1/98	Complaint for Declaratory Judgment and Request for Issuance of Writ of Mandamus
12/2/98	Order – Petition for Writ of Mandamus to be argued on December 7, 1998 at 10:00 a.m. Briefs will be accepted from parties who have entered an appearance in this action no later than 3:00 p.m. December 4, 1998
12/7/98	Minute Entry – Petition for Writ of Mandamus – Motion argued by parties. Motion taken under advisement. Proceedings continued to 12/9/98 – 10:00 a.m.
12/9/98	Order and Writ of Mandamus. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Guam Election Commission shall hold a runoff election as referred to in § 1422 of the Organic Act. The runoff election between the Democratic and Republican gubernatorial candidates shall be held on Saturday, December 19, 1998.
12/9/98	Order re motion for a stay pending appeal – Denied
12/9/98	Real Parties in Interests' Notice of Appeal to the United States Court of Appeals for the Ninth Circuit from the District Court's December 9, 1998 Order

In the United States Court of Appeals for the Ninth Circuit

12/10/98 Filed appellants Carl T.C. Gutierrez and Madeleine Z. Bordallo's emergency motion for stay of order to hold runoff election pending appeal and to expedite appeal

12/15/98 Filed appellees Joseph F. Ada and Felix P. Camacho's response opposing emergency motion for stay of order to hold runoff election

12/15/98 Filed order (Stephen S. TROTT and Barry G. SILVERMAN): Appellants' motion to stay the district court's 12/09/98 order is GRANTED. See Todman v. Boschulte, 694 F.2d 939, 940 (3d Cir. 1982). Appellants' motion to expedite the briefing schedule and hearing schedule is GRANTED.

1/11/99 Filed appellant Carl T.C. Gutierrez and appellant Madeleine Z. Bordallo's opening brief

2/5/99 Filed appellees Joseph F. Ada and Felix P. Camacho's brief

2/19/99 Filed Carl T.C. Gutierrez and Madeleine Z. Bordallo's reply brief

2/25/99 Filed appellants Carl T.C. Gutierrez and Madeleine Z. Bordallo's additional citations

3/8/99 ARGUED AND SUBMITTED to John T. NOONAN, A.W. TASHIMA, Jane A. Restani

4/19/99 FILED OPINION: AFFIRMED, REMANDED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published, John T. NOONAN; A.W. TASHIMA, author; Jane A. Restani.) FILED AND ENTERED JUDGMENT.

4/30/99 Filed appellant Carl T.C. Gutierrez and appellant Madeleine Z. Bordallo's petition for rehearing with suggestion for rehearing en banc

5/24/99 Filed appellant Carl T.C. Gutierrez and appellant Madeleine Z. Bordallo's motion to stay the mandate

5/25/99 Filed order (John T. NOONAN, A.W. TASHIMA); denying petition and the petition for en banc hearing

5/26/99 Filed appellee Joseph F. Ada's response opposing appellants' motion to stay the mandate

5/27/99 Filed order (A.W. TASHIMA): Appellants have made a conditional motion for stay of mandate to enable them to prepare and file a petition for a writ of certiorari with the U.S. Supreme Court. The motion was conditioned on the denial of appellants' then-pending petition for rehearing and rehearing en banc. That motion was received by the clerk on 5/24/99. On 5/25/99 the petition for rehearing and rehearing en banc was DENIED. Appellants' motion is GRANTED. Issuance of the mandate is stayed for a period of 35 days (the period requested by appellants), said 35-day period to commence on 6/1/99 and expire on 7/6/99.

6/1/99 Filed appellees' motion to modify stay of mandate issued 5/27/99

6/7/99 Filed appellants Carl T.C. Gutierrez and Madeleine Z. Bordallo's opposition and declaration in opposition to motion to modify stay of mandate

6/21/99 Filed order (John T. NOONAN, A.W. TASHIMA, Jane Restani): Plaintiffs'-appellees' motion to modify stay of mandate issued 5/27/99 is denied.

7/12/99 Received notice from Supreme Court: petition for certiorari filed

7/21/99 Filed order (A.W. TASHIMA): This court is informed that appellants have filed a timely petition for writ of certiorari with the U.S. Supreme Court. Accordingly, the stay of this court's mandate shall continue pending the Supreme Court's final disposition of the petition.

THE VANDEVELD LAW OFFICES, P.C.
Curtis C. Van de veld
Attorney at Law
Union Bank Bldg., Suite 213
194 Hernan Cortes Ave.
Hagatña, Guam 96910
Telephone: (671) 472-2863/4
Facsimile: (671) 472-2886

Attorney for Plaintiffs: JOSEPH F. ADA and FELIX P. CAMACHO

UNITED STATES DISTRICT COURT

DISTRICT OF GUAM

JOSEPH F. ADA and FELIX P. CAMACHO, Plaintiffs, vs. GOVERNMENT OF GUAM, GUAM ELECTION COMMISSION and its commissioners; JOSEPH F. MESA, JOSEPH T. DUENAS, FREDERICK J. HORECKY, DOUGLAS B. MOYLAN, ROSANNA D. SAN MIGUEL, LEONILA L.G. HERRERO, Defendants, and, CARL T.C. GUTIERREZ and MADELEINE Z. BORDALLO, Real Parties In Interest.	CIVIL CASE NO. CIV 98-00066 **COMPLAINT FOR DECLARATORY JUDGMENT AND REQUEST FOR ISSUANCE OF WRIT OF MANDAMUS** (Filed Dec. 1, 1998)

COME NOW Plaintiffs, Joseph F. Ada and Felix P. Camacho, and pray that: 1) this Court issue a Declaratory Judgment stating that a) Carl T.C. Gutierrez and Madeline Z. Bordallo were not elected by a majority of the votes cast by the people who were qualified to vote for the members of the Legislature of Guam, and b) pursuant to all requirements of 48 U.S.C. § 1422, a runoff election shall be held between the candidates for Governor and Lieutenant Governor, i.e., the Plaintiffs and defendants Carl T.C. Gutierrez and Madeline Z. Bordallo; and, 2) this Court issue a Writ of Mandamus: a) to review the Declaration of Election Results, adopted on November 16, 1998, by the Guam Election Commission, and the subsequent issuance of certificates of election, by the Guam Election Commission, and b) direct the Government of Guam, Guam Election Commission to hold a runoff election within 14 days of the issuance of a Declaratory Judgment. Further, Plaintiffs pray that this court: 1) order, and hold, evidentiary hearings for presentation of testimony, with respect to election irregularities, and 2) stay the fourteen day period for a runoff election between Plaintiffs and defendant's Carl T.C. Gutierrez and Madeline Z. Bordallo, the Real Parties in Interest.

JURISDICTION

1. The jurisdiction of this Court is invoked under the Constitution of the United States of America, Article III, § 2; 28 USC §§ 1331, 1361, 1651, 2201, and 2202; and 48 USC § 1422.

PARTIES

2. Plaintiffs, Joseph F. Ada and Felix P. Camacho, are each of them, over the age of majority, residents of Guam, and candidates for the offices of Governor and Lieutenant Governor, respectively, in the November 1998, elections.

3. Defendant Government of Guam, Guam Election Commission, is an agency of the government of Guam tasked with the responsibility to conduct fair and impartial democratic elections, in accordance with the laws of the United States and Guam, for the offices of Governor and Lieutenant Governor, as well as the members of the Legislature, and Congressional representative, in the November 1998, elections.

4. Defendants Carl T.C. Gutierrez and Madeline Z. Bordallo are residents of Guam, over the age of majority, and candidates for the offices of Governor and Lieutenant Governor, respectively, in the November 1998, elections.

FACTS

5. On November 3, 1998, a General Election for the candidacies of Governor and Lieutenant Governor of Guam took place on the Island of Guam. Initial results of the General Election revealed that: 1) a total number of 48,666 votes were cast for the candidacies of Governor and Lieutenant Governor; 2) Carl T.C. Gutierrez and Madeline Z. Bordallo (hereinafter "Gutierrez") garnered a total number of 24,250 votes cast; 3) Joseph F. Ada and Felix P. Camacho (hereinafter "Ada") garnered a total

number of 21,200 votes cast; 4) write-in candidates garnered a total number of 1,294 votes cast; 5) a total number of 1,313 votes were cast which did not go to Gutierrez, Ada or a write-in candidate; and, 6) a total number of 609 votes were cast for both Ada and Gutierrez (hereinafter the "Initial Results"). See, Exhibit 1.[1]

6. Following the General Election, various claims of election irregularities, including ballot count discrepancies[2] and non-U.S. citizen voters, were revealed to the Guam Election Commission (hereinafter the "GEC"). See, Exhibit 2, and Affidavit of Douglas B. Moylan. Furthermore, the GEC was confronted with a question as to the exact interpretation of the phrase "a majority of the votes cast", as that phrase is set out in the Organic Act of Guam. 48 U.S.C. § 1422.

7. From November 3, 1998 to November 11, 1998, the GEC, comprised of five on-island members[3], three members who were representatives of the Democrat

---

[1] These figures for votes cast (and Exhibit 1) were attached to, and made a part of, the Declaration of Election Results made by the Guam Election Commission at its November 16, 1998 meeting.

[2] 68% of the Precincts evidenced ballot count discrepancies.

[3] Under 3 GCA § 2101, the Guam Election Commission must consist of seven members, three members (appointed by the Governor) from each of Guam's two political parties, and one member selected and appointed by the six members appointed by the Governor (the "independent member"). During the period in question, however, the independent member had not been appointed. Furthermore, Leonila L.G. Herrero, a Republican Party of Guam representative on the Guam Election Commission, was off-island.

Party of Guam (and therefore also tied to Gutierrez) and two members who were representatives of the Republican Party of Guam (and therefore also tied to Ada), were at a deadlock with respect to the claims of election irregularities and the proper definition of "a majority of the votes cast. . . ."[4]

8. On or about November 11, 1998, Leonila L.G. Herrero, a Republican Party of Guam representative on the GEC, who had been off-island for some time, and therefore had not recently participated in any GEC meetings, arrived on Guam. On November 12, 1998, Ms. Herrero appeared at a televised GEC meeting, which meeting was hastily called, with unresolved questions regarding proper notice to GEC members, by certain members tied to Gutierrez. At the November 12, 1998 meeting, a GEC member tied to Gutierrez moved along with other GEC members who were present at the meeting, to declare Gutierrez as having the number of votes for the office of Governor and Lieutenant Governor. The televised November 12, 1998 meeting showed that Ms. Herrero possessed no clear grasp, or perhaps absolutely no grasp, of the issues surrounding the claims of election irregularities. Furthermore, it appeared that GEC members of the Gutierrez camp intended to "railroad" their motion through the meeting. Nevertheless, although under obvious pressure to vote in favor of the Gutierrez camp motion, Ms. Herrero refused to give the Gutierrez camp her vote.

---

[4] Under 3 GCA § 2101, the vote of a majority of the Guam Election Commission is required to make any action of the Guam Election Commission effective.

9. On November 13, 1998, the GEC held a meeting at which certain members discussed, but did not resolve, problems in connection with ballot count discrepancies, missing absentee ballots, and non-U.S. citizen voters.[5] (Other problems in connection with the 1998 General Election, which problems the GEC has not clearly resolved, include: 1) the question of whether either blank or spoiled ballots should be counted as "votes cast" in the General Election; 2) votes cast by under-age voters; 3) votes cast by voters with one, identical social security number[6]; 4) ballots being offered, on November 3, 1998, not at the polls, but at Guam Memorial Hospital, in violation of the Guam elections Law.[7])

10. Once again, on November 13, 1998, although under pressure to vote in favor of a Gutierrez camp motion similar to the November 12, 1998 motion, Ms. Herrero refused to give the Gutierrez camp her vote. Surprisingly however, at a GEC meeting on November 16, 1998[8], the GEC having not yet properly resolved any of

---

[5] According to a report by the Superior Court of Guam, made to the Guam Election Commission, with names drawn from a sample of only 9,000 registrants at the Department of Motor Vehicles, Government of Guam, it appears that at least 482 non-U.S. citizens voted in the 1998 General Election.

[6] 151 voters were reported to have one, identical social security number.

[7] 3 GCA § 1101 et. seq.

[8] Under 5 GCA § 8103, the Guam Election Commission meetings must be open and public, unless the Commission determines to exclude members of the public for the orderly conduct of its business. At the November 16, 1998 Guam Election Commission meeting, however, members of the Guam Police Department, with no authority from the Election

the above-noted problems, Ms. Herrero voted for a Gutierrez camp sponsored motion to: 1) declare Gutierrez as having the largest number of votes for the office of Governor and Lieutenant Governor, and 2) certify Gutierrez as the winner of the election.[9]

QUESTIONS PRESENTED

11. The Organic Act of Guam states, in part, as follows:

> The executive power of Guam shall be vested in an executive officer whose official title shall be the "Governor of Guam". The Governor of Guam, together with the Lieutenant Governor, shall be elected by a majority of the votes cast by the people who are qualified to vote for the members of the Legislature of Guam. The Governor and Lieutenant Governor shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices. If no candidate receives a majority of the votes cast in any election, on the fourteenth day thereafter a runoff election shall be held between the candidates for Governor and Lieutenant Governor receiving the highest and second highest number of votes cast. 48 U.S.C.A. § 1422 (West 1996) (emphasis added).

Commission, determined to keep certain members of the public, including one senatorial write-in candidate, from attending the meeting. As a result, pursuant to 5 GCA § 8114, the possibility exists that actions of the Guam Election Commission at the November 16, 1998 meeting are void and of no effect.

[9] It is Plaintiffs' belief that soon after the November 16, 1998 meeting, Ms. Herrero departed from Guam.

12. Black's Law Dictionary defines the phrase "majority vote" as follows:

> Majority vote. Vote by more than half of voters for candidate or other matter on ballot. BLACK'S LAW DICTIONARY 955 (6th ed. 1990).

13. Nowhere in Guam statutes, or the Organic Act, however, is the phrase "a majority of the votes cast" defined. The facts indicate that the GEC did not count either blank or spoiled ballots in calculating the total number of votes cast in the 1998 General Election. Therefore, the first question presented to this Court is: As blank and spoiled ballots were not counted in connection with GEC's November 16, 1998 Declaration of Election Results, should not the GEC declare that Gutierrez did not receive the majority of votes cast in the 1998 General Election?

14. Assuming that a total number of 50,588 votes were cast for the candidacies of Governor and Lieutenant Governor in the 1998 General Election, under the definition set out in Black's Law Dictionary, a majority vote is half of the 50,588 votes cast. Half of 50,588 votes, equals 25,294 votes (50,588 x 50% = 25,294). However, Gutierrez garnered only 24,250 votes. Ada garnered 21,200 votes. The second question thus presented is: As neither Gutierrez, nor Ada, received a majority of the votes cast in the 1998 General Election, should not the GEC, pursuant to the Organic Act of Guam, require a runoff election between Gutierrez and Ada?

15. A third question is presented in connection with the numerous election irregularities overlooked by the GEC. Specifically, the third question is: Should not the

GEC resolve the questions surrounding: ballot count discrepancies; missing absentee ballots; illegal and non-citizen voters; votes by voters with one, identical social security number, and voting on November 3, 1998, at the Guam Memorial Hospital, in order to determine whether Gutierrez or Ada received a majority of the votes cast in the 1998 General Election?

WHEREFORE, Plaintiffs pray that this Court:

1. Issue a Declaratory Judgment stating that Carl T.C. Gutierrez and Madeline Z. Bordallo were not elected by a majority of the votes cast by the people who were qualified to vote for the members of the Legislature of Guam;

2. Issue a Declaratory Judgment and Writ of Mandamus requiring that a runoff election shall be held between the candidates for Governor and Lieutenant Governor, i.e., the Plaintiffs and Carl T.C. Gutierrez and Madeline Z. Bordallo;

3. Issue Writ of Mandamus to review the Declaration of Election Results, adopted on November 16, 1998, by the Guam Election Commission;

4. Issue a Writ of Mandamus to review the issuance of certificates of election, by the Guam Election Commission;

5. Order, and hold, evidenciary hearings for presentation of testimony, with respect to election irregularities;

6. Stay fourteen day period for a runoff election between Plaintiffs and Carl T.C. Gutierrez and Madeline Z. Bordallo, the Real Parties in Interest; and,

7. Grant Plaintiffs their court costs and reasonable attorney's fees and such other and further relief or recovery to which they may be entitled.

Dated this 1st day of December 1998.

THE VANDEVELD LAW OFFICES, P.C.

/s/ Curtis C. Van de veld
CURTIS C. VAN DE VELD
Attorney for Plaintiffs

VERIFICATION

I, JOSEPH F. ADA, the undersigned, being first duly sworn, depose and say:

That I am a party to the above-entitled action and that I have read the foregoing complaint and to the best of my knowledge and belief, the matters therein stated are true and correct, except as to those matters alleged upon information and belief, as to those matters I believe them to be true.

Dated: 12/1/98

/s/ Joseph F. Ada
JOSEPH F. ADA

SUBSCRIBED AND SWORN to before me, a Notary Public in and for Guam this 1st day of December 1998, by JOSEPH F. ADA.

Victoria S. Quichocho
[Notary Seal]

VERIFICATION

I, FELIX P. CAMACHO, the undersigned, being first duly sworn, depose and say:

That I am a party to the above-entitled action and that I have read the foregoing complaint and to the best of my knowledge and belief, the matters therein stated are true and correct, except as to those matters alleged upon information and belief, as to those matters I believe them to be true.

Dated: 12/1/98

/s/ Felix P. Camacho
FELIX P. CAMACHO

SUBSCRIBED AND SWORN to before me, a Notary Public in and for Guam this 1st day of December 1998, by FELIX P. CAMACHO.

Victoria S. Quichocho
[Notary Seal]

EXHIBIT 1

GUAM

GENERAL ELECTION NOVEMBER 3, 1998

	Total Number Voting		48515			
	Precincts Reporting	72 of	72	100.00%	48,666	
GOVERNOR/LIEUTENANT GOVERNOR						
***	GUTIERREZ/BORDALLO –D		24159	49.79%	24,250	49.82%
	ADA/CAMACHO –R		21147	43.58%	21,200	43.56%
	_____		1291	2.66%	1,294	2.65%
	Total Votes Cast		48515		48,666	
	Number Under Votes		1312	2.70%	1,313	2.69%
	Number Over Votes		606	1.24%	609	1.25%
LEGISLATURE (Elect 15)						
***	AGUON, FRANK BLAS JR. –D		27666	3.80%	27,752	3.81%
***	CALVO, EDDIE BAZA –R		27117	3.72%	27,187	3.73%
***	SANCHEZ, SIMON A. II –R		23889	3.28%	23,939	3.28%
***	MOYLAN, KALEO –R		23666	3.25%	23,721	3.25%
***	PANGELINAN, BEN C. –D		23241	3.19%	23,316	3.20%
***	UNPINGCO, ANTONIO REYES –R		22873	3.11%	22,729	3.12%
***	FORBES, MARK –R		22574	3.10%	22,629	3.10%
***	KASPERBAUER, DR. LARRY F. –R		22380	3.07%	22,425	3.08%
***	LAMORENA, ALBERTO A. –R		22131	3.04%	22,181	3.04%
***	LEON GUERRERO, CARLOTTA A. –R		22011	3.02%	22,056	3.03%
***	CAMACHO, MARCEL G. –R		21548	2.96%	21,596	2.96%
***	BROWN, JOANNE M. SALAS –R		20603	2.83%	20,655	2.83%
***	SALAS, DR. JOHN CAMACHO –R		19874	2.73%	19,924	2.73%
***	BLAZ, ANTHONY CRISOSTOMO –R		19036	2.61%	19,084	2.62%
***	BERMUDES, EULOGIO –D		18929	2.60%	19,002	2.61%

FLORES, WILLIAM B.S.M. –D	18622	2.55%	18,696	2.56%
CHARFAUROS, MARK CAMPOS –D	18578	2.55%	18,633	2.56%
CAMACHO, FRANCISCO PAULINO –D	18560	2.55%	18,640	2.56%
BLAS, JR., FRANK FLORES –R	18325	2.51%	18,372	2.52%
NELSON, TED SGAMBELLURI –D	17633	2.42%	17,697	2.43%
ESPALDON, JAMES V. – R	17628	2.42%	17,655	2.42%
CRUZ, EDWARDO J., M.D. –R	16809	2.30%	16,842	2.31%
NELSON, JAMES E., III –D	16756	2.30%	16,824	2.31%
LUJAN, GALEN J. –D	14368	1.97%	14,428	1.98%
BITANGA, EDUARDO C. –D	12180	1.67%	12,232	1.68%
PEREZ, NORBERT MUNOZ JR. –D	10177	1.39%	10,219	1.40%
CHARGUALAF, DOT –D	8327	1.14%	8,362	1.14%
CUNDIFF, BILL BABAUTO –D	8084	1.11%	8,127	1.11%
TORRES, TRINI TAITINGFONG –D	7861	1.08%	7,901	1.08%
PLEADWELL, JEFF –D	7439	1.02%	7,475	1.02%
DUENAS, LUIS PAULINO –D	6828	.93%	6,868	.94%
	24447	3.35%	24,506	3.36%
Total Votes Cast	727725		727,725	
Number Under Votes	130521	17.93%	130,523	17.93%
Number Over Votes	17250	2.37%	17,257	2.37%

HOUSE OF REPRESENTATIVES					
***	UNDERWOOD, ROBERT A. –D	34070	70.22%	34,179	70.23%
	CRUZ, MANUEL G. –R	10735	22.12%	10,763	22.11%
		1107	2.28%	1,111	2.28%
	Total Votes Cast	[Illegible]		[Illegible]	
	Number Under Votes	[Illegible]	4.62%	2,253	4.62%
	Number Over Votes	359	.73%	360	.73%
HAYA DISTRICT BOARDS OF EDUCATION (Elect 6)					
***	BARCINAS, TOMAS SAN NICHOLAS	6638	8.71%	6,685	8.78%
***	PEREZ, VICENTE PANGELINAN	4875	6.40%	4,910	6.45%
***	LIZAMA, KELLY A.	4718	6.80%	4,749	6.2%
***	PANGELINAN, ZITA D.	4703	6.18%	4,734	6.22%
***	SANTOS, ROKE BORJA	4468	5.87%	4,498	5.91%
***	SABLAN, ALEJO CONCEPCION	4406	5.79%	4,446	5.84%
	SANTOS, FRED C.	4052	5.32%	4,092	5.37%
	MCMANUS, STEVEN CASTRO	3347	4.39%	3,374	4.43%
	MEAD, BARRY L.	2875	3.77%	2,894	3.80%
	HERLIHY, HORACE F.	2704	3.55%	2,727	3.50%
	BIMA, WESLEY T.	1953	2.56%	1,960	2.30%
	ALIG, FRANKLIN J.	1718	2.25%	1,729	2.20%
	_____	168	.22%	170	.20%
	Total Votes Cast	76092		76,092	
	Number Under Votes	29149	38.30%	29,169	38.3%
	Number Over Votes	324	.42%	324	.42%

KATTAN DISTRICT BOARDS OF EDUCATION
(Elect 6)

***	PALOMO, ROSA SALAS	7112	8.19%
***	ADA, PETER ALECXIS DIAZ	6976	8.03%
***	SANTOS, GEORGE AGUON	5011	5.77%
***	TOVES, FRANCIS PATRICK	4953	5.71%
***	CRUZ, FRANKLIN SABLAN	4789	5.51%
***	QUINTANILLA, JEANNETTE M.N.	3895	4.48%
	ARTERO, JESUS M.	3576	4.12%
	TAIMANRO, MONICA GUERRERO	3434	3.95%
	CRUZ, MICHAEL A.	3297	3.79%
	CEPEDA, ROMAN G.	3089	3.55%
	BURCH, JOHN T.	2680	3.08%
	DE ORO, ARTHUR A.	2584	2.94%
	AYUYU, RONALD A.	1709	1.96%
	SHRINGI, BOBBY A.	1675	1.92%
	_____	212	.24%
	Total Votes Cast	86796	
	Number Under Votes	31366	38.13%
	Number Over Votes	462	.53%

LAGU DISTRICT BOARDS OF EDUCATION
(Elect 6)

***	ARTERO, EDDIE CALVO	7719	8.83%	7,731	8.84%
***	HERNANDEZ, ROMEO MENO	6063	8.93%	6,069	6.94%
***	GUERRERO, SOLEDAD ROBERTO	5807	6.64%	5,814	6.65%
***	TAITANO, FRANCIS J.	5355	6.12%	5,361	6.13%
***	OPENA, LILLIAN S.N.	5341	6.11%	5,347	6.11%
***	ARMSTRONG, JOHN	5212	5.96%	5,221	5.97%
	_____	392	.44%	393	.44%
	Total Votes Cast	87384		87,384	
	Number Under Votes	51435	58.86%	51,439	58.86%
	Number Over Votes	60	. 6%	60	.06%

LUCHAN DISTRICT BOARDS OF EDUCATION
(Elect 6)

***	LUJAN, JESSE	3587	8.78%	3,595	8.80%
***	NELSON, PETER R.	2564	6.28%	2,577	6.31%
***	HOLLOWAY, CALVIN	2295	5.62%	2,303	5.64%
***	SANTOS, DANNY A.	2214	5.42%	2,222	5.44%
***	SLATER, ROGER	1912	4.68%	1,916	4.69%
	_____	596	1.46%	597	1.46%
	Total Votes Cast	40818		40,818	
	Number Under Votes	27650	67.73%	27,665	67.77%
	Number Over Votes	0	. 0%	0	. 0%
	TOTAL BALLOTS CAST	48515		48,666	
	TOTAL TYPE 1 BALLOTS	48515			

DECLARATION OF ELECTION RESULTS PURSUANT TO 3 GCA §11132

WE, the undersigned members of the Guam Election Commission, hereby DECLARE, pursuant to 3 GCA §11132, that the following persons have been elected to office in the General Election conducted on November 3, 1998, such persons having the largest number of votes for that office:

1. FOR GOVERNOR AND LIEUTENANT GOVERNOR:

   CARL T.C. GUTIERREZ FOR GOVERNOR
   MADELEINE Z. BORDALLO FOR LIEUTENANT GOVERNOR

2. FOR DELEGATE TO THE UNITED STATES HOUSE OF REPRESENTATIVES:

   ROBERT A. UNDERWOOD

3. FOR THE GUAM LEGISLATURE:

   (1) FRANK BLAS AGUON, JR.
   (2) EDDIE BAZA CALVO
   (3) SIMON A. SANCHEZ, II
   (4) KALEO MOYLAN
   (5) BEN C. PANGELINAN
   (6) ANTONIO REYES UNPINGCO
   (7) MARK FORBES
   (8) DR. LARRY F. KASPERBAUER
   (9) ALBERTO A. LAMORENA, V.
   (10) CARLOTTA A. LEON GUERRERO

(11) MARCEL G. CAMACHO

(12) JOANNE M. SALAS BROWN

(13) DR. JOHN CAMACHO SALAS

(14) ANTHONY CRISOSTOMO BLAZ

(15) EULOGIO C. BERMUDES

4. The foregoing persons have been elected to the aforementioned offices. The Guam Election Commission shall forthwith make and issue "certificates of election" for each person elected to office pursuant to 3 GCA §11133.

DULY AND REGULARLY ADOPTED ON THE 16th DAY OF NOVEMBER, 1998.

JOSEPH F. MESA, *Chairman*	**JOSEPH T. DUENAS,** *Vice Chairman*
FREDERICK J. HORECKY, *Member*	**DOUGLAS B. MOYLAN,** *Member*
ROSSANA D. SAN MIGUEL, *Member*	**LEONILA L.G. HERRERO,** *Member*

[LOGO] GUAM ELECTION COMMISSION [LOGO]
Kumision Ileksion Guahan
P.O. Box 8G – Hagatna, Guam 96932
Tel: (671) 477-9791/3 * Fax: (671) 477-1895

November 12, 1998

MEMORANDUM

TO: Board of Directors

FROM: Executive Director

SUBJECT: **Audit Report of Ballot Count Discrepancies**

As directed by the Board at the reconvened Special meeting of November 6, 1998, attached is the audit report of the ballot count discrepancies showing in forty-nine precincts. Staff members conducted the audit with the presence of representatives of both political parties.

In summary, and excluding the three (3) precincts in which ballots were not cast, the common discrepancy found was machine count problems showing undercount and overcount and Precinct Officials miscounting signatures on the Voter Signature Roster. Others were misprecincts (precincts mixed in with another precinct) where some registered in its respective precinct, and some not.

Given this audit report, I will await Board's further direction. I will be available if you should have any questions.

/s/ Henry A. Torres
HENRY A. TORRES

Attachment

AUDIT REPORT OF BALLOT COUNT DISCREPANCIES

PRECINCTS	REMARKS/FINDINGS
P-1	35 Absentee ballots were recorded on Voter Signature Roster, but not cast. [35]
P-4A	1) Precinct Officials miscounted the Voter Signature Roster by 1. 2) Machine undercount = 1.
P-5	One marked ballot was found in ballot box. Could not determine whether it was a cast ballot or spoiled ballot (envelope containing spoiled ballots were not defaced). Machine undercount = 1.
P-5A	Contained mis-precinct (49 ballots belonging to Umatac P-6). Machine overcount = 4.
P-6	Contained mis-precinct (1 ballot belonging to Talofofo P-9A). Machine overcount = 1. [100]
P-8	1) 100 cast ballots were placed in an envelope marked USED BALLOTS and taped together with UNUSED BALLOT ENVELOPES containing the unused ballots. 2) Precinct Officials miscounted the Voter Signature Roster.
P-9	1) Precinct Officials miscounted the Voter Signature Roster. 2) Machine overcount = 1.

P-9A	One ballot found with P-6 ballots was not recorded.
P-11A	Precinct Officials counted the rejected absentee ballots on the Voter Signature Roster = 4.
P-11B	Precinct Officials counted a double signature.
P-12B	Contained mis-precinct (one ballot belonging to P-12). Machine undercount = 2.
P-13	Contained mis-precinct (one ballot belonging to MTM P-14A).
P-17A	Contained one ballot more than the number of Voters who voted.
P-17G	1) Precinct Officials inventory of Unused Ballots was off by 23. [23] 2) Precinct Officials misounted [sic] the Voter Signature Roster by 2. 3) Machine undercount = 1. [174 +8 182] [168 16]
P-18D	1) Contained one mis-precinct (which did not register at its respective precinct) 2) A voter casted both his spoiled and good ballot in ballot box. 3) Machine overcount = 2.

P-18G	1) 16 Absentee ballots were recorded on Voter Signature Roster, but not cast. [16]
	2) 76 ballots were found with P-18H.
	3) Machine undercount = 1.
P-18H	1) Contained mis-precinct (76 ballots which registered in its respective precinct).
	2) Machine undercount = 2.
P-19	1) Contained mis-precinct (3 ballots belonging to P-19A which did not register in its respective precinct).
	2) Machine overcount = 1.
P-19C	1) 8 signatures were not counted in the Voter Signature Roster.
	[- 8]
	2) Machine undercount = 1.

P-2A	P-14	Precinct Officials miscounted the Voter Signature Roster.
P-4	P-15	
P-4B	P-18K	
P-13B		
P-4C	P-16B	Machine count problems (overcount & undercount)
P-5B	P-16C	
P-7	P-17	
P-7A	P-17C	
P-8B	P-17F	

P-10B	P-18C
P-12	P-18I
P-13A	P-18J
P-14A	P-18L
P-15C	P-19B
P-16A	P-19D
	P-19E

EXHIBIT 2

DISTRICT COURT OF GUAM
HAGATNA, GUAM

JOSEPH F. ADA and FELIX P. CAMACHO, Plaintiffs, vs. GOVERNMENT OF GUAM, GUAM ELECTION COMMISSION, and ITS COMMISSIONERS; JOSEPH F. MESA JOSEPH T. DUENAS, FREDERICK J. HORECKY, DOUGLAS B. MOYLAN, ROSANNA D. SAN MIGUEL, LEONILA L.G. HERRERO, Defendants. *And,* CARL T.C. GUTTERREZ and MADELEINE Z. BORDALLO, Real Parties In Interest.	)	Civil Case No. ___ **AFFIDAVIT OF DOUGLAS B. MOYLAN**

DOUGLAS B. MOYLAN, being first duly sworn, deposes and says:

1. I make this Affidavit on personal knowledge, having personal knowledge of all the facts herein stated.

2. I am competent to testify to the matters stated herein and would so testify in any trial or hearing concerning this matter.

3. I am a Guam Election Commission ("GEC" *or* "Commission") member and have been a member since May 9, 1996, and was recently re-appointed and sworn-in on May 14, 1998. My term expires on May 20, 2000.

4. On Tuesday, November 3, 1998 I was present at the Election Central at the University of Guam Computer Center since about 8:00 p.m. November 3, 1998 was the General Election.

5. I was present at the convening of the GEC meeting at approximately 9:10 p.m. on November 3, 1998. Present at the meeting were the Chairman, Mr. Joseph Mesa; the Vice-Chairman, Mr. Joseph Duenas; Member Attorney Frederick Horecky; Member Mayor Rosanne San Miguel; and myself. The meeting was convened and shortly thereafter recessed for purposes of beginning tabulating the election results.

6. A technical representative from Election Systems and Software, formerly American Information Systems, was on Island for purposes of assisting in the operation of the tabulation machines that evening. His name was Mr. Dan Stussey.

7. Sometime shortly after the *first* tabulation report had been printed on the evening of November 3, 1998, showing a difference of approximately one hundred (100) votes between the Gubernatorial candidates, the electrical power at the Election Central browned and then shut off for approximately 3-5 seconds. The lights on the tabulation machines browned then shut off, as well as all other lights in the room. It was uncertain to me whether the power fluctuation and temporary outage effected [sic] the tabulation machines.

8. Shortly after the *second* tabulation results summary, after fifty-one (51) of the seventy-two (72) precincts were tabulated, the Chairman of the GEC brought to Mr. Stussey's attention that the summary results did *not* appear consistent with a precinct report that had also been generated. Mr. Stussey then re-ran the magnetic storage tapes into a machine he called an "accumulator," and the tabulation results changed.

9. The GEC then publicly acknowledged to the media that a technical error occurred and amended the *second* summary tabulation report (*uncertified*) of fifty-one (51) of the seventy-two (72) precincts. That evening a total of four summary reports were disseminated to the media, one (1) of which, described herein, was deemed in error.

10. During the evening of November 3, 1998, GEC staff commented that certain precinct officials had brought in their ballots in their personal vehicles. They were also unescorted by Guam Police Department officers, which I understood was contrary to GEC standard operating procedures. I was unsure whether all precinct officials traveled together from that particular precinct(s) with the ballot box.

11. On November 3, 1998 I noticed during a cursory review of the ballots that several ballots for the Gubernatorial race did *not* have marked either Gubernatorial candidate, but actually blackened the oval and wrote in a particular Gubernatorial team (i.e. Gutierrez/Bordallo or Ada/Camacho) on the line provided for write-ins.

12. In the early morning hours of November 4, 1998, during the tabulation, I asked the GEC legal counsel what

was the standard that the GEC had to apply under the 1950 Organic Act of Guam for a Gubernatorial race due to the close contest. Counsel advised me and Member Horecky that the winner would require a majority of the votes cast, *however,* that there was a question as to whether to count the undercount ballots as part of the total votes cast. Undercount ballots are ballots which mark neither candidate and do not identify any write-in candidate.

13. The GEC decided in an earlier meeting to place all offices on a single ballot.

14. I left the Election Central at approximately 2:30 a.m. on Wednesday, November 4, 1998, shortly after the fourth and final machine counted summary tabulation results were completed. I did *not* stay at Election Central to await the hand count of ballots rejected by the balloting machines, referred to as the "reconciliation process." I understand that this reconciliation actually took until 7 a.m. on Wednesday, November 4, 1998.

15. The write-in ballots had to be manually, hand tabulated and were estimated by the GEC Executive Director to take literally days to do so. The write-in ballots were *not* tabulated by November 4, 1998, but were only completed on Thursday evening, November 12, 1998. I understand that the balloting machines only show on their report whether a ballot contained a write-in for a particular office, but that who that write-in was had to be manually, hand identified and counted, which would be a time consuming process.

16. Subsequent to the convening and recess of the GEC meeting on Tuesday, November 3, 1998, the GEC convened during the following times:

November 3, 1998	Convening of GEC Mtg. & Recess
November 6, 1998	Meeting Called to Order & Recessed
November 9, 1998	Meeting Called to Order & Recessed
November 12, 1998	(*Meeting in Controversy*)
November 13, 1998	Meeting Called to Order & Recessed
November 16, 1998	Meeting Adjourned

17. At the meeting on November 6, 1998 I asked whether the write-in ballots had been tabulated, I was advised that the write-in tabulation had commenced on Thursday, November 5, 1998, but was ongoing. I asked whether there were any police officers continuing to secure the ballots at the Election Center. I was informed that the ballots were now at the GEC Hagatna Office and that no police officers were guarding the still uncounted ballots. I was concerned about the requirement of 3 GCA § 11128, *Election Center Open Until Tabulation Complete.* During the meeting the GEC Executive Director advised the Commission that his preliminary findings showed that Hagatna, Inarajan and Dededo, as well as forty-six (46) other precincts, of seventy-two (72) precincts had discrepancies. I understood that this was the first time in the GEC's history of the problems of this scope. The Commission then asked the GEC Executive Director to perform an audit, and to *temporarily* stop the write-in

ballot tabulation. A one (1) page summary of precinct official counts v. machine counts was presented to the Commission by the GEC Executive Director.

18. At the meeting on November 9, 1998 the GEC Executive Director orally gave the Commission his findings, which could *not* explain how or why ballots had been inaccurately counted by either the precinct officials or the tabulation machines. I motioned that due to the balloting discrepancies of approximately forty-nine (49) of the seventy-two (72) precincts that the GEC issue subpoenas upon the precinct officials pursuant to Title 3 Guam Code Annotated § 11130, *Incomplete or Ambiguous Precinct Forms,* in order to perform an adequate investigation. I believed that the Commission needed to obtain a factual basis for the discrepancies, before applying the legal standard. The motion failed to receive a vote to second the motion. I was subsequently informed by the GEC Executive Director that even the balloting machines did *not* appear to be counting the ballots accurately.

19. At the November 9, 1998 meeting the GEC Executive Director showed the Commission documents indicating that a "Linda Naputi" had affixed her signature to two (2) other persons in Inarajan which seemed to indicate that she voted for those persons. No investigation could be authorized due to the lack of four (4) votes.

20. At the November 9, 1998 meeting it was also brought to the GEC's attention by the Administrative Director of the Superior Court of Guam, via a November 9, 1998 letter to the GEC Executive Director, that according to their juror list that approximately five hundred seventy-one (571) persons were on the GEC voter listing,

however, that they showed up in government records as non-U.S. citizens. Further, that there were one hundred fifty-one (151) names on the GEC voter listing who had identical social security numbers. The sampling taken was from 9,674 DMV names. The GEC voter listing contained in excess of 57,000 names for the General Election. Upon motion to investigation [sic] this matter, the GEC failed to obtain the four (4) votes needed to initiate any investigation, nor have the list transmitted to the U.S. Immigration and Naturalization Service for identification. According to the GEC Executive Director, approximately four hundred eighty-two (482) of those persons who were identified as non-U.S. citizens *actually* voted.

21. Previously, on or about June 25, 1997 Judge John S. Unpingco transmitted a letter to the GEC informing it of names on the GEC voter listing who were *not* U.S. citizens. On November 11, 1998 I visited the GEC office and requested the GEC Executive Director pull all the GEC minutes and the audio tapes where this issue was discussed. The following dates for the pertinent GEC minutes and audio tapes were as follows:

August 14, 1997

September 15, 1997

October 9, 1997

22. Upon review of the GEC minutes and the audio tapes of the meetings I noticed that although GEC action was taken on certain specific names identified as non-U.S. citizens, as well against the voter registrars who signed them into the GEC voter list, the GEC did *not* further investigate the matter nor change its registration process

to avoid future errors. Judge Unpingco and the courtroom clerk identified that there were also other names on the GEC voter list that were brought to the court's attention who were *not* U.S. citizens. At the September 15, 1997 GEC meeting I asked whether the Commission could correct the process for identifying U.S. citizens by sending names provided for the GEC voter listing to the U.S. Immigration and Naturalization Service. Vice-Chairman Perez did *not* believe that they could identify non-naturalized U.S. citizens.

23. At the October 9, 1997 GEC meeting the Commission voted to send the names of two (2) voter registrars who signed up non-U.S. citizens into the GEC voter listing to the Office of the Attorney General, after review of the letter by Member Horecky. I was not sure if the letter was ever transmitted.

24. At the November 9, 1998 meeting the GEC passed a motion to *restart* counting the write-in ballots from the place left off since temporarily halting counting due to the precinct audit. The GEC agreed to meet once the write-in ballots were tabulated, which the GEC Executive Director estimated by noon on Thursday, November 12, 1998. I also amended a motion made by Member Horecky that the approximately ninety-nine (99) ballots found in an envelope from an Inarajan precinct be tabulated and that the approximately thirty (30) absentee ballots found from a Hagatna precinct also be tabulated, *however,* that the results *not* be included with the other tabulated results yet. The Chairman raised a legal question as to whether they could now be counted as part of the results due to the legal requirement under the Election Code that the precinct officials deposit the absentee

ballots into the ballot box. I was *not* satisfied as to the origin nor chain of custody of these newly found ballots and pressed for an investigation.

25. Notwithstanding the motion, which passed on November 9, 1998, to restart tabulation of the write-in votes from where the GEC last left off, I was informed by the GEC Executive Director that Member Duenas informed him after the meeting to perform the counting of the write-in ballots from the beginning. The recounting of the write-in ballots from the beginning would delay the write-in completion time to Friday, November 13, 1998. I was unaware of this change of the motion regarding counting of write-in votes, nor did I consent to the change.

26. On November 10, 1998 I requested via letter that the GEC Executive Director prepare subpoenas for the precinct officials where discrepancies were discovered under my authority as a Member of the GEC for questioning to commence at noon on November 12, 1998.

27. I was verbally advised on November 11, 1998 by the GEC Executive Director that the GEC did *not* have funding to issue the subpoenas nor pay the process servers. I therefore asked that the precinct officials be contacted and asked to appear for the Hagatna, Inarajan and Dededo precincts for noon on November 12, 1998. I subsequently prepared a list of questions for the precinct officials and coordinated with legal counsel to be present at the questioning.

28. I understood after speaking with a GEC staffer on the evening of November 11, 1998 that the meeting for November 12, 1998 was cancelled and rescheduled due to

the non-completion of the tabulation write-in results, and that notices were sent to the media for dissemination to the public. The meeting was rescheduled to November 13, 1998 at noon.

29. I understood after speaking with the GEC Executive Director on November 12, 1998 that Members Duenas, Horecky and San Miguel visited the GEC Executive Director with Attorney Carbullido towards the early evening or early afternoon of November 11, 1998, demanding that the meeting scheduled for November 12, 1998 be conducted. I understand that a letter was subsequently transmitted to him, and I received a copy.

30. On November 12, 1998 at about noon, I appeared to begin the questioning of the precinct officials. While at the meeting the Vice-Chairperson, Member Horecky and Member San Miguel appeared and began having set up a table to commence their meeting. I advised the Vice-Chairperson before the meeting that I objected to being at this meeting as tabulation was *not* completed. We were all seated at the table at about 12:00 p.m. I then asked why we weren't going to begin, and the Vice-Chairman stated that we should wait for the Chairperson as he would wait for us.

31. At approximately 12:20 p.m. previously absent member Leonila L.G. Herrero, who had been off-Island for several months, appeared. I was unaware she returned on Island. The Vice-Chairman then immediately began the meeting. I placed on the record that I was present under protest. Member Horecky then brought up the issue of declaring the meeting an emergency. I asked

what was the emergency and was informed that the people of Guam want resolution of this matter. I objected to the motion for an emergency declaration. Notwithstanding the objection the other four (4) members passed the emergency certification, several copies which had already been prepared in writing. I signed the copies "objected to."

32. At the November 12, 1998 meeting I asked whether the four (4) other members present had met alone *before* the meeting in violation of the Open Government Law, Title 5 Guam Code Annotated.

33. At the November 12, 1998 meeting Member Horecky then produced a document labeled as "Exhibit A" showing the tabulation results he prepared for the Gubernatorial and the Congressional offices with the write-ins *not* shown. I objected to the proceeding as being premature due to the lack of completion of the write-in tabulation results. I stated that because of the ambiguity in the 1950 Organic Act of Guam that it was unclear whether undercount ballots should be counted and that if they were that the Gutierrez/Bordallo team did *not* achieve 50% + 1 (majority) of the votes required, *however*, that if the tabulation of the write-in votes were completed that they may achieve the 50% + 1 under both analyses. I also read for the GEC's attention the second sentence of 3 GCA § 11115, *Write-In Votes.*

34. At the November 12, 1998 meeting I further objected to the *ex parte* contact of the Vice-Chairman having unilaterally changed the motion passed by the GEC on November 9, 1998 to begin counting the write-ins from where the GEC last left off. Had the motion been

complied with the tabulation would have been completed by then. Tabulation of the write-in votes actually completed on the evening of November 12, 1998.

35. At the final meeting on Monday, November 16, 1998 I objected to Member Horecky's motion to certify the offices, except the School Board, as being in violation of the Roberts Rules of Order, as the motion was previously raised at the GEC meeting held on Friday, November 13, 1998 and failed. GEC Counsel concurred with the application of the Roberts Rules of Order and my interpretation. Counsel stated that only a Member who voted against the motion previously made could make it at a subsequent time. I further objected to the motion as having no tabulation numbers to support it. Member Horecky then amended his motion to include the third column of the GEC issued tabulation results. I again reincorporated my objection under the Roberts Rules of Order on making an already failed motion, which was the same substantially.

36. Notwithstanding my objections on November 16, 1998, three (3) other GEC Members voted to support Member Horecky's motion to certify, as amended. *However,* the third column that was adopted by the Commission by a vote of four (4) incorporated a total ballot count of 48,666. Gubernatorial Team Gutierrez/Bordallo, *however,* only received 24,250 votes, which put their percentage at 49.82%, which was *not* the majority of votes cast under the 1950 Organic Act of Guam requirements. The Gubernatorial Team, under the motion which apparently passed, failed to met the 1950 Organic Act of Guam requirement of 50% + 1 of the votes cast. Further, the 1950 Organic Act of Guam is silent as to whether undercount

ballots should be applied towards the total number of votes cast and I understood that neither the U.S. Supreme Court nor any court in this jurisdiction has resolved this question.

37. Also at the GEC meeting on Monday, November 16, 1998, I understand that Senator, complainant and write-in Senatorial Candidate Angel L.G. Santos was arrested by Guam Police Department Officers at the 1st Floor of the GCIC Building when he attempted to be present at the GEC meeting on the second floor of the GCIC Building. Unbeknownst to me, Senator Santos was held in another GEC Office in a private room. I was never contacted regarding the procedure on effectuating the Open Government Law under which the GEC meeting was being conducted, and the procedures for making it open to the public in conformance with 5 GCA §§8103(a) and (b). At no time did I consent to Senator Santos' arrest, nor did I know that GPD was preventing persons from entering the open meeting at the entrance to the GCIC Building. Had I known I would have objected and stopped the meeting until the matter were resolved.

38. During the meeting of November 16, 1998 at approximately 12:35 p.m. I was handed a document from Ms. Jennifer Martinez, signed by Senator Angel L.G. Santos lodging a complaint and contesting the meeting currently ongoing, which was to entertain the disposition of the election results of which he was a write-in candidate. Based upon his letter, it appeared that he objected to the participation by two (2) GEC members. I then passed the document to the GEC Executive Director who signed received and had it taken to the GEC Chairman. I was not informed that Senator Santos was in custody.

39. Based upon my subsequent understanding that Senator Angel L. G. Santos was arrested for attempting to gain entry in the GEC meeting. I believe that the meeting held on November 16, 1998 was illegal and in violation of the Open Government Law. The alleged certification which was conducted by four (4) of the members was void under 5 GCA §8114, *Action Voided*, and therefore apparently any certification by the GEC may be illegal.

Further affiant sayeth not this 1st day of December, 1998.

/s/ Douglas B. Moylan
DOUGLAS B. MOYLAN

SUBSCRIBED & SWORN to before me this 1st day of December, 1998, by DOUGLAS B. MOYLAN.

/s/ Victoria S. Quichocho
NOTARY PUBLIC

[LOGO]

ELECTION COMMISSION
Territory of Guam
P.O. BOX BG
AGANA, GUAM 96910

TEL: 777-9791
777-9792
777-9793

MINUTES

The Commission met on the 16th day of October, 1974 at 5:15 p.m. in the office of the Election Commission. Present were:

Ms. Priscilla F. Cruz, Chairman
Mr. George Bourland, Member
Mr. Thomas Calvo, Member
Mr. Alberto T. Lamorena, Member
Mr. Jesus Okiyama, Member
Mr. Jack Rosenzweig, Legal Counsel
Mr. A.T. Carbullido, Executive Director
Ms. Ann L. Sablam, Assistant to the Executive Director

The meeting was called to order by the Chairman.

MINUTES

The minutes of October 9, 1974 were presented to the Commission members for their review. Mr. Calvo indicated that he attended the meeting although his name was not listed in the minutes. Mr. Lamorena moved that the minutes be approved subject to further corrections/ seconded by Mr. Bourland/passed.

OLD BUSINESS

Executive Director Mr. Carbullido's letter dated October 11, 1974 to the Chairman regarding the Election Commission's contract with Institute Data was considered by the members. Mr. Carbullido was asked to research the terms of the contract as Mr. Joyner has asked for additional payment for running the Washington Delegate's ballot, although the members felt that this service was covered by the present contract. The contract states that Institute Data shall provide vote tabulation services for the Primary and General elections, which should include the running of the Washington Delegate's ballot. However, the Election Commission informed Mr. Joyner in July that

there would be no ballot for the Washington Delegate and have since reversed this decision. Mr. Joyner states that he has scheduled his computer time so that he does not now have the machine hours available for this service and would have to rent time from another machine. The members decided to advise Mr. Joyner to bill the Commission for the charges he feels he is entitled to. The Commission will pay the charges, subject to having the matter considered on a legal basis.

Procedures for the tabulation center, composed by Ms. Sablan, were presented to the Commission members for their concurrence. The members will study the procedures and make recommendations for changes and [line missing]

Mr. Carbullido advised the members that instructions for the precinct officials are nearly completed and will be distributed to the members for their consideration next week. It was suggested by the members that the precinct officials be instructed that, when they are counting the ballots and separating the void, spoiled and valid ballots, they pull out the ballots which have candidates written in and put them on the bottom of the stack of valid ballots. The purpose of this is that in the event the computer does not pick up write-ins properly, this would be caught if the write-ins are all together.

Mr. Carbullido presented the Commission with a proposal from Mr. Donald Liberty, Manager of the G.C.I.C. Building, for renting additional office space for the two-month period October 15th through December 15th. Mr. Bourland moved that the Commission go ahead with this proposal; the motion was passed by the members.

CORRESPONDENCE

A letter dated October 15, 1974 from senatorial candidate Thomas Tanaka, Jr. requesting that the Commission allow him to retract expenses shown on two of his previous Campaign Statements of Account due to the non-delivery of the goods purchased was considered by the members. Mr. Bourland moved that he be allowed to retract these expenses/passed by the members.

FINANCIAL STATEMENT

The Financial Status Report as of September 30, 1974 for the Election Commission office was presented to the Commission members for their information.

NEW BUSINESS

Two Letters from the Editor which appeared in *Dateline* concerning the performance of the Election Commission were brought to the attention of the members. It was suggested that Mr. Brislin, author of these articles, be asked to pay a visit to the office to inspect the Election Commission expenditures, but the members decided against this. It was the general consensus that if Mr. Brislin is interested in presenting factual information to the public in his editorials, he can take the initiative to gather these facts, which he has not done so far as regards his articles concerning the Election Commission.

GENERAL DISCUSSION

Mr. Carbullido advised the members that there are now a total of 28,853 registered voters in Guam. The Election

Commission has, as of this date, received 269 absentee applications and has sent out 208 ballots. Sixty-eight applications are still under consideration.

During the meeting of October 9th the meaning of the term "majority of votes cast" was discussed by the members. Legal Counsel Mr. Rosenzweig is now directed by the members to try to find a precedent to indicate whether this term means total of *all* votes cast, or total of all *valid* votes cast.

Mr. Okiyama posed a question as to whether expenses for campaign materials purchased for a General Election campaign but not used could be retracted from the candidate's Campaign Statement of Account. The members decided that such a situation would be considered on a case by case basis.

Mr. Calvo asked whether opinion surveys conducted by a candidate would be considered as campaign expense. Legal counsel Mr. Rosenzweig stated that if the survey were conducted in aid of a candidate's campaign, then such a survey would have to be considered an expense.

The meeting was adjourned at 6:35 p.m.

/s/ A.T. Carbullido
A.T. CARBULLIDO

[LOGO] ELECTION COMMISSION
Territory of Guam
P.O. BOX BG
AGANA, GUAM 96910

TEL: 777-9791
777-9792
777-9793

October 9, 1974

AGENDA

MINUTES

October 7, 1974

OLD BUSINESS

1. Letter dated October 7, 1974 from Legal Counsel Jack Rosenzweig to the Commission members regarding questions asked by Edward Gould, Public Relations Manager for the Democratic Party, in his letter of September 29, 1974.
2. Letter dated October 8, 1974 from Governor Camacho to speaker Ramirez of the 12th Guam Legislature explaining why he vetoed Bill 891 containing the Election Commission's Supplemental Budget and transmitting an appropriation bill to cover the Election Commission's requirements.
3. Legal Counsel Mr. Rosenzweig's Complaint for Declaratory Relief submitted to the Superior Court of Guam on October 8th.

NEW BUSINESS

1. *Dateline*'s editorial regarding the Election Commission.
2. Screening of absentee rejects.
3. Review of validity of ballots.

BILLS

1. Bill 936 amending the Government Code relative to campaigning.
2. Bill 944 relative to placing on the 1974 General Election ballot certain special questions.

/s/ A.T. Carbullido
A.T. CARBULLIDO

EXHIBIT [Illegible]

CUNLIFFE & COOK
Attorneys at Law
Suite 200
210 O'Hare Street
Agana, Guam 96910

F. Randall Cunliffe — Telephone: 472-1824
Jeffrey A. Cook — 472-1833

MEMORANDUM

(Received Nov. 4, 1982)

TO: Guam Election Commission

FROM: Legal Counsel

DATE: November 4, 1982

SUBJECT: Runoff Election for November 2, 1982 Governors Election

The Board has requested a legal opinion on whether or not a runoff election is required in the November 2, 1982 governor's election. Specifically the question is whether the Bordallo/Reyes candidacy received a majority of the votes cast pursuant to 48 USC Section 1422. (Section 6 of the Organic Act of Guam).

Section 1422 states that the Governor shall be elected by a majority of the votes cast by the people qualified to vote for the Legislature. It then states that the Governor and Lieutenant Governor shall be chosen jointly, by the casting of a single vote applicable to both offices. "If no candidate receives a majority of the votes cast in any election," there shall be a runoff fourteen (14) days later.

EC Section 9135 states how a voter shall mark his ballot to indicate his vote. EC Section 9145 states that an unmarked ballot should be returned to the precinct official and handled as a spoiled ballot. EC Section 11111 states that any ballot not marked as provided by law shall be void. EC Section 11114 states that if for any reason it is impossible to determine a voter's choice for any office, his ballot shall not be counted for that office, but the rest of his ballot, if properly marked, shall be counted.

It is my opinion that the interpretation of the Organic Act should be that the majority required is of those votes cast in the governor's race alone. Only votes for either party in [sic] write-ins should be considered in the total votes cast. The language of the Act that each voter shall cast a single vote applicable to both offices seems to support this interpretation. If a voter makes no choice for

the office of Governor, he has not cast a vote for the governorship. Moreover, since the Governor's race could be on a separate ballot, Section 9145 supports the position that no vote has been cast, and therefore it should not be part of the total count of votes affecting what number would make a majority.

The language of the Organic Act is not clear on this point. It talks of the majority of votes cast in any election. However, this statement follows directly after the statement that the Governor and Lieutenant Governor shall be chosen jointly, by the casting by each voter of a single vote. Therefore, Congress is implying that the total votes cast be of those cast in the Governor's race.

Section 1711 of 48 USC is more clear on the vote for the Washington representative. It clearly states that the delegate shall be elected by a majority of the votes cast for the office of delegate.

It is my opinion that, although not so clearly stated, Congress intended that the majority of the votes cast in the Governor's race alone would be necessary to win that election.

Respectfully submitted,

CUNLIFFE & COOK

By: /s/ Jeffrey A. Cook
JEFFREY A. COOK
Attorney at Law

JAC/cq

EXHIBIT [Illegible]

LAW OFFICES OF CESAR C. CABOT, P.C.
LEGAL MEMORANDUM

[RECEIVED NOV 06 1998]

TO: Henry A. Torres, Executive Director
Guam Election Commission

FROM: Cesar C. Cabot, Legal Counsel

DATE: November 6, 1998

SUBJECT: Interpretation of the Term "Majority of Votes Cast" Pursuant to the Organic Act of Guam, 48 U.S.C. § 1422

Our office has been instructed to provide the following legal opinion.

I. FACTS

The 1998 General Election was held to elect, among others, the Governor and Lt. Governor of Guam on November 3, 1998. The ballots were duly tabulated and the unofficial results are as follows:

NAME	NO. OF VOTES	PERCENTAGE
a. Carl T.C. Gutierrez/ Madeleine Z. Bordallo	24,159	49.79%
b. Joseph F. Ada/ Felix M. Camacho	21,147	43.58%
c. Write-In Votes Cast	1,291	2.66%
d. Number of Under Votes	1,312	2.70%

c. Number of Over Votes	606	1.24%
f. Total Votes Cast	48,515	100%

II. ISSUE

What shall constitute a "majority of votes cast" pursuant to the Organic Act of Guam (48 U.S.C. § 1422), in determining the requisite number of votes to be declared the winner of the Gubernatorial/Lt. Gubernatorial race during the 1998 General Election?

III. STATUTE AND ANALYSIS

Title 3 Guam Code Annotated § 11132 entitled *"Declaration of Results"*, provides that "immediately after completion of the tabulation of all election results, the Commission shall declare elected to each office the person having the largest number of votes for that office." The threshold standard provided in Section 11132 of the Election Code contrasts sharply with the requirements of the Organic Act of Guam, 48 U.S.C. Subchapter 2, § 1422 (the "Organic Act") which provides in relevant part:

> "the Governor of Guam, together with the Lieutenant Governor, *shall be elected by a majority of the votes cast by the people* who are qualified to vote for the members of the Legislature on Guam. The Governor and Lt. Governor shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices. If no candidate receives a majority of the votes cast in any election, on the fourteenth day thereafter a

runoff election shall be held between the candidates for Governor and Lt. Governor receiving the highest and second highest number of votes cast." (Emphasis added).

The Election Code also requires the Guam Election Commission ("GEC") to immediately certify the results of the election.

> **§ 11133. Certificate of Election.** Immediately after declaring the results of any election, the Commission shall make or cause to be made "certificates of election" for every person elected to office. The form of such certificates shall be prescribed in the Election Manual. The Commission shall cause to be placed in the hands of the elected person a copy of such certificate which shall constitute evidence of that person's right to office. The Election Commission shall preserve the original certificate for a period of ten (10) years.

The broad grant of legislative power given to Guam in its Organic Act is hedged with the restriction that it may pass no law which shall be inconsistent with the Organic Act or the laws of the United States made applicable to the territory of Guam. Designedly or unwittingly, Section 11132 of the Election Code provides a different threshold standard for declaring the winners of the Gubernatorial/Lt. Gubernatorial race than that provided for in the Organic Act. It is legal counsel's opinion that application of the threshold standard contained in section 11132 of the Election Code to the election of Governor/Lt. Governor is inconsistent with the Organic Act, and the clear mandate of the Organic Act must control.

The GEC has previously addressed the issue of whether blank votes shall be counted as part of the aggregate number of total votes cast, by which to determine the required number of votes to declare a victorious Gubernatorial/Lt. Gubernatorial team. It appears that the first instance was at a GEC meeting held on October 21, 1974. According to the official minutes of said meeting, former GEC legal counsel was asked to report his findings concerning the interpretation of the term "majority of votes cast" as it exists in the Organic Act. Former GEC legal counsel, Jack Rosenzweig, opined that the "majority of votes cast" would indicate the majority of valid votes cast only. The GEC record does not contain a written opinion from Attorney Rosenzweig.

The second occasion appeared to have been by a legal memorandum prepared by former GEC legal counsel Jeffrey A. Cook on November 4, 1982. Attorney Cook provided an interpretation of the term "majority of votes cast". In Attorney Cook's opinion, he indicated that if a voter makes no choice for the office of Governor, he has not cast a vote for the governorship. He further asserts his position that "a blank ballot signifies that no vote has been cast, and therefore it should not be part of the total count of votes affecting what number would make a majority." *GEC Legal Memorandum*, November 4, 1982, by Jeffrey A. Cook, Esq., at page 2.

The previous opinions expressed by former GEC legal counsel appear to indicate the GEC's position on the instant issue in 1974 and 1982. While the aforementioned opinions of 1974 and 1982 set precedent of prior actions of the GEC Board, this Board is free to adopt previous Board policy relating to the instant matter, or to develop

new or amended policies. A review of the GEC record fails to indicate any GEC rule promulgated by any past or present boards pursuant to the Administrative Adjudication Act directly on this issue.

A comprehensive, but not exhaustive, review of cases before the Superior Court of Guam, Supreme Court of Guam, and the District Court of Guam, appear to indicate that this matter has never been squarely addressed by any Guam courts.[1]

---

[1] While it appears that the Guam Courts have never squarely addressed the present issue, the Decision and Order issued by the Superior Court in the case of *Meno v. Guam Election Commission*, Civil Case No. CV1195-96, contains mention of the Organic Act requirements for election of the Guam Governor and Lieutenant Governor. In the Decision rendered by the Honorable Joaquin V.E. Manibusan, Judge of the Superior Court, on November 4, 1996, the Court examined the applicability of the "Santos Amendment" to the tabulation of initiative measure votes placed upon the ballot during the 1996 election. Said Decision and Order contained dicta in which the Court found that the requirement of majority votes necessary to pass an initiative measure pursuant to the Election Code was similar to that required by the Organic Act § 1422 involving the election of Governors and Lieutenant Governors. Judge Manibusan opined that the language contained in the Organic Act § 1422 appears to require that more than a mere majority of votes is required for the election of the Governor and Lieutenant Governor, and that "rather it appears that a majority of all the votes cast by registered voters is required. This is similar to the requirement which is set out in the Santos Amendment." *See* Decision and order, *Meno v. GEC, et al.*, Superior Court of Guam, Civil Case No. CV1195-96 issued on November 4, 1996 at pages 11-12. It is legal counsel's opinion that the aforementioned opinion of Judge Manibusan constitutes dicta, which are opinions of a Judge which do not embody the resolution or determination of the central issues before the court. The Court

It is important to note that neither the Organic nor the Election Code (Title 3, Guam Code Annotated) provide for a definition of the term "majority of votes cast".

Assorted jurisdictions throughout the United States have reached varying conclusions on the nature of the popular majority required, often based upon the distinct wording of the statute being interpreted. Some state courts have chosen not to include blank ballots in determining the aggregate number of votes cast from which the required number of votes to constitute a majority is determined. *See Todman Supervisor of Elections of the U.S. Virgin Island, et al., v. Boschulte, et al.*, 694 F.2d 939 (3rd Cir. 1982). Other courts have included blank and spoiled ballots in determining the aggregate amount in its analysis of the instant issue. *Hawaii State AFL/CIO, et al. v. Yoshina et al.*, 84 Haw. 374, 935 P.2d 89 (Supreme Court of Hawaii 1997); *People ex rel. Hewitt v. Cincinnati L. & C. Ry. Company*, 256 Ill. 280, 100 N.E. 208 (1912) (holding that levy of road tax was illegal where statute required "a majority of all the ballots cast at said election" to approve a road tax, and although a majority of those voting "yes" or "no" on the tax voted in favor, it failed to receive a majority of ballots cast at the election, where the aggregate amount included blank and spoiled ballots).

---

in its ruling above did not make a final determination as to whether blank ballots would be counted as "no votes" pursuant to the "Santos Amendment" in tabulating votes for or against a proposed Initiative Measure appearing on the election ballot, and likewise did not rule out the possibility. While the central issue of the *Meno* case was distinct from the issues in this instant opinion, the determination of the court gives us some insight on how the Guam Courts may find, should this [LINE MISSING].

The *Todman* case aforementioned was rendered by the Third Circuit Court of Appeals and interpreted the Organic Act of the Virgin Islands. *See Todman, Supervisor of Elections of the U.S. Virgin Islands, et al., v. Boschulte, et al.*, 694 F.2d 939 (3rd Cir. 1982). The Third Circuit Court of Appeals ruled that ballots which were left entirely blank or which were blank as to Governor and Lieutenant Governor were not to be counted in computing the majority of votes cast in the Virgin Islands elections. The *Todman* case is persuasive in that the Third Circuit was interpreting a section from the Virgin Islands Organic Act which is strikingly similar to the Organic Act.[2] The *Todman* decision originated from the Third Circuit, and Guam cases are heard by the Ninth Circuit Court of Appeals. As such, the *Todman* case is persuasive, but not controlling with regard to interpretation of Guam statutes.

Equally persuasive is the case of *Hawaii State AFL/CIO, et al., v. Yoshina, et al.*, in which the Hawaii Supreme Court ruled that the term "majority of votes cast" shall be interpreted according to the plain and natural meaning of the statute, which shall include blank and spoiled ballots, *Hawaii State AFL/CIO, et al., v. Yoshina*, 84 Haw. 374, 935 P.2d 89 (Supreme Court of Hawaii 1997). In the *Yoshina* case, the Hawaii Supreme Court held that the definition of "majority of ballots cast" should be accorded its natural and plain meaning.

---

[2] Section 11 of the Revised Organic Act of 1954, 48 U.S.C. § 1591 (the "Organic Act of the Virgin Islands") provides that "the Governor of the Virgin Islands, together with the Lieutenant Governor, shall be elected by a [LINE MISSING].

The Hawaii Supreme Court reasoned that words used in a statute, if they are clear and unambiguous, are to be construed as they are written. Further, the court held that the words in a statute are presumed to have been used in their natural sense unless the context furnishes some ground to control, qualify or enlarge them. The Hawaii statute, like the Organic Act, did not provide any definition of the phrase "majority of ballots cast". The Hawaii Supreme Court concluded that a ballot is "cast" without regard to whether the ballot indicated the choice of the voter or was left blank, and that the phrase "ballots cast" in its natural sense, refers to the total number of ballots deposited in the ballot box, including blank ballots and over votes.

Like the *Todman* case, the *Yoshina* case appears persuasive, but is not controlling upon Guam Courts. In the limited time available, legal counsel has not discovered cases from other jurisdictions entirely dispositive of the issues in this opinion.

IV. CONCLUSION

In summary, the review of relevant case law from other jurisdictions indicate that the term "majority of votes cast" is capable of more than one interpretation, by various courts throughout the United States and its Territories. Neither the Organic Act nor the election Code (Title 3 of the Guam Code Annotated) contain any definition of the term "majority of votes cast", or of the separate words comprising such phrase. There do not appear to be any decisions from Guam courts squarely addressing the issues dealt with in this opinion and, as such, the

GEC has very little by which to guide its interpretation of the phrase "majority of votes cast" as found in the Organic Act.

The GEC has previously addressed the instant issue in 1974 and 1982. In 1974, the GEC set "policy" that blank votes should not be counted toward the aggregate amount by which the number of votes necessary to declare a winner in the Gubernatorial/Lieutenant Gubernatorial race would be determined. In 1982, former GEC legal counsel, Jeffery A. Cook, Esq., provided a legal opinion, in which Attorney Cook expressed that a blank ballot signifies that no vote has been cast and, therefore, should not be part of the total count of votes affecting the number that would constitute a majority.

The prior opinions of former GEC legal counsel indicate the GEC's position on the instant issue in 1974 and 1982. It is legal counsel's opinion that the prior actions of the GEC in 1974 and 1982 are not binding upon the present Board, and that this GEC Board is free to adopt previous board "policy" to the instant matter, or to develop new or amended policies. Legal counsel is also of the opinion that based on the aforementioned, there exist no compelling reason to disturb the prior rulings of former GEC legal counsel, Jack Rosenzweig, Esq., rendered in 1974, and the Jeffrey A. Cook, Esq., legal opinion of 1982. As such, the prior opinions of legal counsels shall stand as the existing "policy" of the GEC, unless and until revised by the GEC Board.

I hope this meets the satisfaction of the Board. If you have any questions or comments, please feel free to contact me.

/s/ Cesar C. Cabot
CESAR C. CABOT
Legal Counsel

CCC:me
M983166.CCC

EXHIBIT [Illegible]

[LOGO] Congressional Research Service • Library of Congress • Washington, D.C. 20540

MEMORANDUM November 9, 1998

TO: Honorable Robert Underwood
Attention: Terry Schroeder

FROM: Kenneth R. Thomas
Legislative Attorney
American Law Division

SUBJECT: Meaning of the Phrase "Majority of Votes Cast" in the Organic Act of Guam

This rush memorandum is in response to your request to determine the meaning of the term "majority of

votes cast" in § 1422 of the Organic Act of Guam.[1] Specifically, you requested a determination as to whether the Governor of Guam, who under the Guam Organic Act must be elected by a "majority of the votes cast by the people who are qualified to vote for the members of the Legislature of Guam," can be elected by receiving a majority of the votes cast in an election, excluding those ballots that did not indicate a choice for Governor.[2]

This office can find no case law addressing the meaning of the term "majority of the votes cast" in the Organic Act of Guam, and the meaning given to the term "majority" by courts appears to vary based on the particular statutory language in question.[3] In the case of Todman v. Boschulte,[4] however, the United States Court of Appeals for the Third Circuit, interpreting language almost identical to the language in question,[5] held that the phrase "a majority of the votes cast" did not include entirely blank ballots and ballots that were blank as to the position in

---

[1] 48 U.S.C. § 1422.

[2] A ballot which did not contain a vote for the governor might be entirely blank or might include votes for other offices, but not for the Office of the Governor.

[3] *See, e.g., Hawaii State AFL-CIO v. Yoshina*, 935 P.2d 89 (Haw. 1997) (holding that a majority of "ballots cast upon such questions" shall include blank or invalid ballots.).

[4] 694 F.2d 939 (3rd Cir. 1982).

[5] In *Todman*, the language being analyzed is virtually identical to the language in the Guam Organic Act, save for references to "the Governor of the Virgin Islands" and to the "legislature of the Virgin Islands," 48 U.S.C. § 1591 (the Governor of the Virgin Islands shall be elected by "a majority of the votes cast by the people who are qualified to vote for the members of the legislature of the Virgin Islands.").

question.[6] Although Guam is in the Ninth Circuit, and thus is not bound by this decision, it would appear to be persuasive precedent for the proposition that the majority of votes cast in § 1422 of the Organic Act of Guam would exclude ballots not indicating a choice for Governor.

/s/ Kenneth R. Thomas
Kenneth R. Thomas
Legislative Attorney
American Law Division

---

[6] 694 F.2d at 940. The reasoning of the court is that voters not expressing a choice on the matter submitted were "presumed to assent to the expressed will of those attending and voting," and thus were not to be taken into consideration in determining the result, 694 F.2d at 941 quoting *Euwema v. Todman*, 323 F.Supp. 167 (D. V.I. 1971). *See also Republican Party of Hawaii v. Waihee*, 709 P.2d 980 (Haw. 1985) (holding that the phrase "a majority of registered electors who vote on the question" does not include "blank illegal, and unintelligible ballots. . . . "). It would appear that courts are more likely to exclude blank or invalid ballots when a statute speaks to a majority of the number of "votes" rather than a majority of the number of "ballots." *See Hawaii State AFL-CIO v.* [LINE MISSING].

F. PHILIP CARBULLIDO, ESQ.
OLIVER W. BORDALLO, ESQ.
CARBULLIDO BORDALLO & BROOKS LLP
C&A Professional Building
251 Martyr Street, Suite 101
Agana, Guam 96910
Telephone: (671) 472-6848

Counsel for Real Parties In Interest

F. RANDALL CUNLIFFE, ESQ.
CUNLIFFE & COOK, P.C.
210 A. Flores Street
Agana, Guam 96910
Telephone: (671) 472-1824

Co-counsel for Real Parties In Interest

IN THE DISTRICT COURT OF GUAM

TERRITORY OF GUAM

JOSEPH F. ADA and FELIX P. CAMACHO Plaintiff, v. GOVERNMENT OF GUAM, GUAM ELECTION COMMISSION and its commissioners: JOSEPH F. MESA, JOSEPH T. DUENAS, FREDERICK J. HORECKY, DOUGLAS B. MOYLAN, ROSANNA D. SAN MIGUEL, LEONILA L.G. HERRERO Defendant. and, CARL T.C. GUTIERREZ and MADELEINE Z. BORDALLO Real Parties In Interest	CIVIL CASE NO. 98-00066 **REAL PARTIES IN INTERESTS' NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FROM THE DISTRICT COURT'S DECEMBER 9, 1998 ORDER** (Filed Dec. 9, 1998)

The Real Parties In Interest, CARL T.C. GUTIERREZ and MADELEINE Z. BORDALLO, ("Appellants") hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order entered by the U.S. District Court of Guam on December 9, 1998, accepting jurisdiction, and issuing a Writ of Mandamus, ruling that the candidates in the 1998 Guam election who were certified as winners were not elected by a majority of votes cast as required by the Organic Act, 48 U.S.C. § 1422 and ordering that a run-off election be conducted on December 19, 1998. A true and correct copy of the District Court's decision and Order is attached to the Civil Appeals Docketing Statement.

Dated this 9th day of December, 1998.

Respectfully submitted,

F. PHILIP CARBULLIDO, ESQ.
OLIVER W. BORDALLO, ESQ.
CARBULLIDO BORDALLO & BROOKS LLP

Counsel for Real Parties In Interest

F. RANDALL CUNLIFFE, ESQ.
CUNLIFFE & COOK, P.C.

Co-counsel for Real Parties In Interest

By: /s/ F. Philip Carbullido
F. PHILIP CARBULLIDO

Supreme Court of the United States

No. 99-51

Carl T. C. Gutierrez and
Madeleine Z. Bordallo,

Petitioners

v.

Joseph F. Ada and Felix P. Camacho

ORDER ALLOWING CERTIORARI.
Filed September 10, 1999.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. The brief of the petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, October 22, 1999. The brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, November 19, 1999. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, November 29, 1999. Rule 29.2 does not apply.

September 10, 1999